

Applicants respectfully traverse the rejections of claims 1-3, and 5 under 35 USC 102, over Jenkins et. al. U.S. Patent 5049441 [hereinafter Jenkins]. At column 2 lines 37-39, Jenkins recites, "The fillers of this invention are employed in amounts ranging from about 1 to about 30 weight percent, preferably about 3 to 15 percent." That excerpt from Jenkins does not describe applicants' claims. Applicants' Claim 1 recites that "the [composition] comprises talc in an amount of less than 1 part per 100 parts by weight of polyethylene." Moreover, Jenkins does not describe Claim 15, which recites "talc in an amount which does not exceed 0.5 part per 100 parts by weight of polyethylene." Please see MPEP 2131 and 2131.03. The MPEP sections state that the facts from the reference to establish anticipation require a disclosure of "sufficient specificity or "clearly envisaging." In applicants' view, Jenkins neither clearly envisages nor sufficiently specifies applicants recitation of "an amount of less than 1 part per 100 parts by weight of polyethylene."

Applicants respectfully traverse the rejection of Claims 1-7 and 10-11 under 35 USC 103(a) as being unpatentable over Jenkins et al in view of WO 85/03194.

Applicants' remarks concerning Jenkins, set forth above, are incorporated by reference here. In summary, it is applicants' position, borne out by the inquiry developed in the MPEP, that Jenkins et al. does not disclose the compositions according to the present invention.

WO 85/03194 relates to a composition comprising,

- 100 parts by weight of elastomer;
- 10 parts to 60 phr of a thermoplastic binder, which can be HDPE (col. 7, lines 18-26);
- 1.0 to 6.0 phr of a slip agent, such as talc (col. 6 line 17); and
- 0.1 to 1.0 phr of a lubricant.

Contrary to the PTO position, WO85/03194 does not demonstrate that the HDPE of Jenkins could be used in pipe. Moreover, if combination of the two references were proper it would not suggest the rejected claims to one of ordinary skill.

The references relate to diametrically opposite compositional requirements. WO 85/03194 suggests that HDPE may be used as a binder. If HDPE is used as a binder in a composition according to the WO reference, then the composition will contain more elastomer, such as rubber crumb, than HDPE.

Moreover, WO 85/03194 clearly teaches that although the thermoplastic binder can be polyethylene, high-density polyethylene binder yields pipes that are somewhat stiff, brittle and difficult to extrude (page 7, line 24-26; Examples 3 page 12, lines 25-29).


Accordingly, the negative suggestion in WO 85/03194 concerning the use of HDPE as a binder would not motivate the person of ordinary skill to use Jenkins' composition to make pipe. See the Jenkins' ABSTRACT, line 9 et seq and column 1, lines 50 et seq, where no mention appears concerning the production of pipe.

Moreover, if literal combination of the two references were proper, Jenkins' composition contains more than 1 part of talc per 100 parts of polyethylene. Accordingly, the suggestion to be derived would be that more than 1 parts of talc per 100 parts of polyethylene should be used. That is not applicants' invention.

If literal combination of the two references were proper, the combined disclosures do not suggest the rejected claimed subject matter.

Reconsideration and an early allowance are respectfully solicited.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marina V. Schneller".

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